OFFICE OF THE EMPLOYER ADVISER

Response To The Report On
Occupational Exposure To PCBs
Industrial Disease Standards Panel
December 1987

submitted - MAY 9th, 1988

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May 9, 1988

RE: REPORT TO THE WORKERS' COMPENSATION BOARD
ON OCCUPATIONAL EXPOSURE TO PCBs
DECEMBER 1987
INDUSTRIAL DISEASE STANDARDS PANEL

The Office of the Employer Adviser (OEA) firmly asserts it's belief in a fair and just system of redress for those injured or disabled as a result of an occupational injury or industrial disease.

Further, the OEA considers investigation into new and unknown industrial diseases critical for the equitable resolution of claims made by workers.

We acknowledge the difficulty in adjudicating industrial disease claims since there may not be conclusive evidence to support a causal relationship between disease and employment. Workers in Ontario deserve to receive all available medical and financial resources when it is proven that an illness, or disability developed from an occupational agent.

OEA POSITION

The IDSP has presented a series of findings and eligibility rules whose wisdom is mitigated by questionable methodology and research.

IDSP FINDINGS

FINDING 1: AT THIS TIME, THE PANEL FINDS A PROBABLE CONNECTION BETWEEN LIVER, BILIARY TRACT AND GALL BLADDER CANCERS AND OCCUPATIONAL EXPOSURE TO PCBs.

We submit that the above finding is incorrect. The IDSP Panel has not demonstrated a probable connection between liver, biliary tract and gall bladder cancers and occupational exposure to PCBs.

The panel has established that various animals, when exposed to clinically administered materials, have been found with carcinogens which may have resulted or could be related to PCB exposure. The Panel has not elaborated as to the tests given and the reliability of those tests.

With reference to human beings, the Panel, overall, has relied only on those studies completed in other countries and has not demonstrated a relationship between those studied in, for example, Sweden, and those studied in Canada. Again, we have not been given any supporting data proving that the studies can be deemed credible. What international experts hold the referred studies used as sufficient in bringing us closer to proving the relationship? For the Panel to state that there is a " probable relationship " it must elaborate on the processes and methodology employed. To simply refer to a study because it supports a particular conclusion is unacceptable.

From a scientific perspective, the causation established by the IDSP relates unqualified exposure to PCBs and noted cancers. The joining of the two conclusions is problematic as the Panel has not demonstrated the correlation using the scientific evidence. In addition, our review of the referenced material has shown that alternative cancers and PCBs can be linked just as the Panel has linked PCBs and the noted cancers; however, the Panel has only recommended the noted cancers for entitlement. The IDSP Panel has not demonstrated a probable connection between liver, biliary tract and gall bladder cancers and occupational exposure to PCBs.

In fact, the Panel has not scientifically and categorically proven causation; certainly not sufficient upon which to develop a new schedule of compensation for industrial disease. Keep in mind that the Ontario treatment of this issue may well create a nation-wide policy.

The OEA is concerned by the intellectual jump and recommends more scientific consideration. The IDSP Panel should consult with experts in Ontario who have been leading in the research and study of cancer.

FINDING 2: AT THIS TIME, THE PANEL DOES NOT FIND A PROBABLE CONNECTION BETWEEN ANY OTHER SITE-SPECIFIC CANCERS AND OCCUPATIONAL EXPOSURE TO PCBs.

The Panel, using the same methodology and information, could not find any other " probable " connection between any other site-specific cancers and occupational exposure but was able to assert that occupational exposure to PCBs can cause cancer of the liver, biliary tract and gall bladder.

Other cancers, such as cancer of the lymphatic and hematopoietic system could not be included. However, in review of the references used by the Panel the majority of studies and reports alluded almost equally to the probability of lymphatic and hematopoietic cancer. Why is it that the probability for one cancer is stronger than that for another?

The OEA is aware of studies undertaken by OHSA in the U.S. which have linked other causes to the workplace. In the shortness of time direct reference will not be made at this time. It is noteworthy that the American studies are more recent than studies relied on by the Panel. Curiously, the American studies do not conclusively link PCBs and cancer. Question: what weight did or would the IDSP Panel put on these and would the analysis have taken a different road?

These studies and interpretations will be made available upon request.

IDSP ELIGIBILITY RULES

ELIGIBILITY RULE 1: THAT CLAIMS ARISING FROM LIVER, BILIARY TRACT AND GALL BLADDER CANCERS AMONG WORKERS FOR WHOM THE DURATION OF OCCUPATIONAL PCB EXPOSURE WAS AT LEAST 3 MONTHS, AND WHERE THE LATENCY PERIOD (FROM FIRST EXPOSURE TO DIAGNOSIS) WAS AT LEAST 5 YEARS, BE COMPENSATED.

We view the above rule containing the potential for abuse and misuse. One cannot, based upon a weak foundation, suggest granting entitlement for the noted cancers and then recommend eligibility criteria which allows entitlement for cancer simply on the basis that PCB exposure occurred for some five years prior.

For example, if a resident of a community, such as on McClure Crescent in Scarborough, filed a claim for exposure relating to the workplace and proved that he or she worked near PCBs for a period of 3 months five years ago and the blood serum concentrations were found significantly higher than the normal background of PCB blood serum concentrations in the general population, that person would receive, according to the Panel recommendations, entitlement to benefits.

The adequacy of this logic is obvious. The OEA recommends more tightening of the eligibility rule providing greater clarity and logic for those who would adjudicate.

ELIGIBILITY RULE 2: WHERE DISPUTE ARISES IN THE APPLICATION OF ELIGIBILITY RULE NUMBER 1 AND CIRCUMSTANCE PERMIT, CLAIMS ARISING FROM LIVER, BILIARY TRACT AND GALL BLADDER CANCERS AMONG WORKERS FOR WHOM THE BODY BURDEN OF PCBs AS MEASURED BY PCB BLOOD SERUM CONCENTRATIONS IS SIGNIFICANTLY HIGHER THAN THE NORMAL BACKGROUND DISTRIBUTION OF PCB BLOOD SERUM CONCENTRATIONS IN THE GENERAL POPULATION, BE COMPENSATED.

The second eligibility rule, reflects how entitlement will be granted to anyone who does not fit into the criteria set out in rule 1. How would one distinguish between occupational exposure, environmental exposure, and other causes of the noted cancers? How do we factor the PCB soil exposure to residents on McClure Crescent into the entitlement question?

From 1929, Canada imported about 40,000 tonnes of PCBs. Production of PCBs was halted in 1977. There are still approximately 25,000 tonnes in use or awaiting storage. How does one distinguish between work related and non-work related causes? The Panel has completely ignored this dilemma.

Cancers are wide ranging. Causes of cancers, if listed, would require hundreds of feet of paper. Could an adjudicative body distinguish between environmental exposure and occupational exposure? Could an adjudicative body distinguish between the other causes of cancer and occupational exposure causing cancer? We do not have any way of viewing one cause from another.

THE ELIGIBILITY RULES ARE VAGUE. THE IDSP ANALYSIS DOES NOT ACCOUNT FOR THE OTHER CAUSES OF THE NOTED CANCERS OR OTHER KINDS OF EXPOSURE. WE CANNOT ACCEPT THIS CRITERIA AS SOUND. IT DOES NOT ALLOW ADJUDICATION BASED ON MERITS BUT BASED ON A 3 TO 5 EXPOSURE VARIABLE.

FURTHER QUESTIONS

In order to link cancer to PCBs scientifically and analytically questions unanswered by or not considered by the IDSP Panel need be reviewed. These include:

1. What scale will be used to judge the general population for comparison purposes?

2. Is there an inventory of employers who still use PCBs?

3. Is there an accurate listing of where PCBs are stored ?

4. What specific types and kinds of exposure are needed for entitlement to be considered?

5. If employers will continue using PCBs of any kind does this, in the Panel's opinion, mean that exposure cases will continue until every source of PCB is eliminated?

6. How long will workers continue to be exposed in the Ontario workplace?

7. How does the Board distinguish between occupational exposure and other types of exposure?

8. How will we determine which employer is to be charged for an exposure case.

9. Specifically, what are the other causes of liver, biliary tract and gall bladder cancer? Please list in complete detail?

10. Who is at the greatest risk?

11. What industries are considered high risk?

12. What type and kind of exposure makes these industries high risk?

13. At what age is a person at his/her greatest risk?

14. Should an employer have the right to test all employee's at present?

15. If an employer finds an employee with PCB blood serum higher than the "NORM", should he now be responsible to re-employ this person?

16. If an employer is not found responsible, should he have the right to remove this person from the work environment without penalty from any Ontario Labour Law or Human Rights Law?

17. Can exposure be passed on through physical contact?

18. Can exposure be passed on through sexual contact?

19. Can exposure be passed on through a blood transfusion?

20. Would an employer have a right to a third party action against another employer if an employee received entitlement yet no PCBs exist on his premises?

21. How would an employer determine what other party was involved?

22. How, in the event of death, would we determine who might be the other employers?

23. Explain what actions have been taken in other jurisdictions such as other provinces, the United States, and Europe?

24. Could the Federal and Provincial government be liable for costs as they allowed the material into Canada in addition to allowing it's production?

25. Would other source manufacturers of PCBs and other source countries be accountable for costs?

26. What mechanism will the Board use for regaining funds from other sources?

27. How will the Board determine Permanent Disability for the noted cancers?

28. Will the workers' right to sue be subrogated to the Board?

29. Will the Ministry of Labour be the agency to conduct testing and maintain a registry for those exposed?

30. Will an employer be subject to a 91(7) and a 91(4) penalty with respect to claims for PCB exposure?

On behalf of Director Jason Mandlowitz and all Employer Advisers, we extend our appreciation for this opportunity and trust that we will be permitted to continue in our participation.

Given the incredible significance of the IDSP findings, or which we disagree, we would anticipate a response, in complete and full detail, to all questions raised and would be please to provide any further detail or clarification if needed.

As in other reviews completed by the Board recently, we would expect that all submissions made would be reviewed and that a specific time frame would be established for responding further.

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